IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 909 OF 2006
WITH
CIVIL APPLICATION NO. 19 OF 2007

Prashant Prabhakar Dongare
and ors. ..Appellants

Vs.

Vijay Yeshwant Salvi ..Respondent

Ms. J.P. Akolkar for appellants.
Mr. Amit Borkar for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : June 13, 2007.

P.C.:

1. Heard Ms. Akolkar the learned counsel for the appellants who were impleaded as defendants in RCS No.569 of 1999 filed by the present respondent-plaintiff. The plaintiff had prayed for permanent and mandatory injunction restraining the defendants from causing interference or obstruction in the use of latrine, passage and water tap which were the common facilities. The plaintiff had purchased the first floor flat in the building standing on CTS

No.497/D on 6/7/1983, whereas the defendants purchased the ground floor flat of the same building on 24/5/1984. As per the plaintiff's case, there was a common facility of passage, latrine and water tap and the latrine was closed by the defendants, they constructed a new latrine in the set off area and did not permit the plaintiff to use the same.

2. Before the trial court Shri Baburao Narayan Labdhe, an employee of the Kolapur Municipal Corporation and Shankar Mane, a neighbour were examined by the plaintiff in support of his case and in addition to the depositions of Vijay Salvi, P.W.1. The employee of the Corporation clearly stated that on the complaint received from Mr.Vijay Salvi, notice at Exh.31 was issued to the defendants after inspection was carried out of the site by a personal visit. By the said notice it was pointed out that the toilet block was constructed without permission. The report was submitted at Exh.32, whereas the panchanama drawn was submitted at Exh.33. In his cross examination this witness stated that when he visited the site on 26/5/1999 he had noticed only one toilet block.

However, he stated that whether the said block was at the original place or not, could be stated by him only after seeing the plan. The defendants also admitted in the Written Statement that for some time the plaintiff was allowed to use the toilet facility.

3. Both the courts below on appreciating the evidence oral and documentary, recorded a finding that the toilet, passage and water tap were the common facilities for the ground floor and first floor flats and, therefore, the suit decreed by the trial court was held to be correct and consequently appeal was dismissed by the Lower Appellate Court. These findings of fact based on the evidence do not raise any substantial question of law for consideration in this second appeal.

4. Hence the second appeal is dismissed in limine.

5. Civil Application No. 19 of 2007 does not survive and shall stand disposed as such.

(B.H. Marlapalle,J.)